IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 5TH JANUARY 2007 / 15TH PAUSHA 1928

CRP.No. 2366 of 2002(F)

{R.C.A.NO.63/1994 OF THE I1ST ADDITIONAL DISTRICT COURT
(RENT CONTROL APPELLATE AUTHORITY), TRIVANDRUM
IN R.C.P.NO.23/1993 OF THE 1ST ADDITIONAL MUNSIFF'S COURT,
(RENT CONTROL COURT),TRIVANDRUM
.....

REVN. PETITIONER: APPELLANT/PETITIONER:

P.INDIRA AMMA, PANAKOTTU PUTHEN VEEDU,
PANAKOTTU MURI, KALATHUKAL,
KARAKULAM VILLAGE.

BY ADV. SRI.G.S.REGHUNATH

RESPONDENTS: RESPONDENT/COUNTER PETITIONER:

P.MOHANAN NAIR, REVATHI BHAVAN,
CHANDAILA, MANNARAKONAM, VATTIYOORKAVU P.O.,
RANDAMADA MURI, DO.VILLAGE, TRIVANDRUM.

BY ADV. SRI.R.S.KALKURA

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 05/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.A.ABDUL GAFOOR &
K.R.UDAYABHANU, JJ.

C.R.P.No.2366 of 2002 F

Dated this the 5th day of January, 2007.

O R D E R

Udayabhanu, J.

The revision petitioner is the landlady, who had initiated these proceedings about more than 13 years back for getting the premises vacated for the bona fide need of her son, who was not having any avocation for starting a provision store.

2. It is the case of the revision petitioner/landlady that both the courts below had grossly erred in rejecting her application. The courts below have held erroneously that PW.1 Harikumar, the son of the petitioner for whom the premises was sought, has admitted that PW.1 himself is running a bakery in the adjacent shop room, which is also owned by the petitioner. It is the specific case of the petitioner that her eldest son Sreekumar is running the bakery and PW.1 is jobless.

3. It is the case of the respondent/tenant that PW.1 Harikumar for whom the premises was sought, is running a bakery in the adjacent shop room and not Sreekumar, as contended by the petitioner.

4. It was pointed out by the revision petitioner that both the courts below have misread the evidence adduced i.e of PW.1 as well as that of PW.2, a witness who was examined to support the case of the petitioner. On an examination of the deposition of the above witnesses, we find that the contention of the counsel for the revision petitioner is perfectly correct. It is in answer to a compound and twisted question that PW.1 in such a manner so that the counts below interpreted as above. It is seen that the question is:

> **"Who was running the bakery that was being run by you earlier?"**

and he has answered that it was one Vijayakumar. Evidently, PW.1 had inadvertently omitted to realise the sting in the question which is likely to affect him. The same is the question asked to PW.2, although it is not in question and answer form. Evidently, the answer is incorporated in the question. It is mentioned by PW.2 who is a person engaged in the metal fabrication work that it was he who manufactured the grill fixed in the bakery of Harikumar (PW.1). Both the courts below have omitted to take into consideration the version of the above witnesses as a whole. It is the version of PW.2 that the cost of the work was paid by Sreekumar and it is Sreekumar who is running the bakery and that Harikumar used to attend the shop at times. Both the courts have relied only on the above solitary answers given by the above witnesses without considering the evidence as a whole. The

appellate court has already held that Ext.A6 series i.e the receipts for remittance of licence fees is with respect to the period subsequent to the disposal of the Rent Control Petition. It is the version of the petitioner that the licence could not be obtained at the time of trial, on account of a mistake in the building number. It is pertinent to note that as per Ext.A6 series, the licensee is Sreekumar. The respondent/tenant has not produced any contra evidence. It would not be possible to produce receipts in different names unless there is change in the name of the earlier licensee. Evidence could have been produced by the respondent. That was not done.

5. Hence, we find that the rejection of Ext.A6 series for the only ground that the same was with respect to the periods subsequent to the disposal of the Rent Control Petition was improper.

The other document relied on by the courts below is Ext.B9 leaflet published on the occasion of a local festival showing the advertisement of "Indira Bakery" which is the disputed bakery. The name of Harikumar, PW.1 is mentioned as the proprietor. It is only Ext.B9, the solitary evidence to suspect the case and the bona fides of the petitioner. PW.1, when questioned about the leaflet so produced, has stated that it was a mistake. Of course, in re-examination and subsequently when CPW.3 the Secretary of the Festival Committee was examined, the above circumstances of PW.1's name appearing in the advertisement has undergone a change, which is not favourable to him. The suggestion to CPW.3 is to the effect that the advertisement was effected at the instance of the respondent. Of course, the above is a lapse on the part of the petitioner. But, we find that the entire case set up by the petitioner cannot

be rejected outright on the solitary piece of evidence i.e Ext.B9. What CPW.3 has stated is that the amount for publication was paid by PW.1 He was unable to produce the counterfoil of the receipt or the written matter with respect to the above advertisement. His version is that everything has been destroyed immediately after the festival. It is possible that a mistake might have occasioned in mentioning the name of the proprietor i.e., the person allegedly running the bakery, who is the brother of PW.1 himself and the names are also somewhat similar. We find that, on a consideration of the evidence as above, there is nothing to suspect the bona fides of the petitioner. Evidently, the courts below have seriously erred in relying on the so-called admissions of Pws.1 and 2. The impression that the courts below gathered from the above answers of Pws.1 and 2 was not meant to be so in the context.

The same is evident if the testimony of the witnesses is read as a whole. Hence, we find that the petitioner has established the bona fides of the need set up and the courts below have arrived at a wrong finding, which is the result of a perverse appreciation of the evidence.

6. So far as the protection of the second proviso to Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act is concerned, the finding of both the courts below is concurrent that the tenant is not entitled to the protection of the above proviso. The evidence in this regard is strongly in favour of the case set up by the petitioner. The tenant could not prove that he is solely depending on the income derived from the business that he is conducting. His wife is employed in the KSEB and the title deeds of the properties in her name are also produced. So far as the second

limb is concerned, PW.1 has testified as to existence of the shop rooms in the vicinity and CPW.1 could not contradict the same. Ext.X1 is the register of the Accommodation Controller. The same cannot be treated as the final word as to the existence of the vacant premises in the locality. There is nothing to show that CPW.1/tenant has made any enquiry to locate any vacant shop room. Hence, we find that so far as the above finding is concerned, the concurrent findings of the courts below are not liable to the interfered with.

6. In such circumstances, the findings of the courts below are reversed. The respondent/tenant is directed to vacate the premises. In view of the plea of the counsel for the respondent, we are inclined to grant time of 12 months from today onwards to vacate premises on condition that he shall remit all rental arrears, if any, and continue to remit the rent

due in future. He shall file an affidavit in the execution court to the effect that he shall give vacant possession of the building to the landlord on or before **5.1.2008** and shall remit all rental arrears, if any, and continue to remit the rent. The affidavit shall be filed within 20 days from today.

Civil Revision Petition is disposed of as above.

Sd/-
(K.A.ABDUL GAFOOR)
JUDGE

Sd/-
(K.R.UDAYABHANU)
JUDGE

sk/

//true copy//

P.S. To Judge

K.A.ABDUL GAFOOR &
K.R.UDAYABHANU, JJ.

C.R.P.No.2366 of 2002 F

O R D E R

5th January, 2006.